

Police Prosecutor Update

Issue No. 172
March 2006

A recent case addressed an issue new in Indiana: does the shining of a spotlight on a person amount to a “seizure” of that person? The Court of Appeals decided that the shining of a spotlight *alone* does not amount to such a show of authority that a reasonable person would have believed that he or she was not free to leave.

Around midnight, six police officers who were part of a task force were patrolling an area where they had made an arrest earlier that evening and had returned to investigate an anonymous tip from a police hotline concerning drug activity. The officers were in three vehicles, only one of which was marked. As they approached a residence, they observed two individuals standing behind a car parked in the front yard of the residence. One of the individuals, the defendant, began to move. One of the officers shined his squad car’s spotlight on the defendant. When the light hit him, the defendant crouched down, pulled something shiny from his waistband, and threw the object underneath the car he had been standing behind. The object was a semi-automatic handgun for which the defendant did not have a license.

The defendant unsuccessfully sought to suppress the handgun, contending that he was unlawfully seized when the police shined the spotlight on him. Since he abandoned the handgun after the police had illegally seized him, it was inadmissible. The law is that a person is seized when, by means of physical force or show of authority, a police officer has in some way restrained the liberty of a citizen. The Court of Appeals looked at cases from other states that had been faced with this issue. Many states do not view illuminating a person with a spotlight as a seizure. However, some courts have concluded that when police illuminate an individual with a spotlight *and also* take some further action, the individual has been seized. A couple of examples: defendant was seized when officer shined spotlight on his vehicle and parked police cruiser in such a manner that defendant could not drive his car out of the parking lot; defendant seized when officers’ vehicles were in front of and behind defendant’s car with take down lights shining. It is pretty evident that there would be a seizure in these cases whether or not a spotlight was involved.

In the Indiana case, the defendant threw the handgun under the car while the police spotlight illuminated him. However, the police did not have their sirens or emergency lights on at or before that time. The officers did not verbally order the defendant to stop, physically touch him, or display their weapons prior to him tossing the gun under the car. At the time he abandoned the gun, all six officers were still in their vehicles, and only one of those vehicles was a marked police car. Therefore, based on all these circumstances, the Court of Appeals held that the shining of the spotlight did not amount to a seizure. However, the use of a spotlight along with other actions could be a seizure.

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It probably seems that we spend too much time reviewing the law regarding police actions based on an anonymous tip, but another conviction has recently been thwarted because of a bad *Terry* stop.

The general rule is that an anonymous tip is not likely to constitute the reasonable suspicion necessary for a valid *Terry* stop. *Absent any independent indicia of reliability of the tip or any officer-observed confirmation* of the tipster’s prediction of the defendant’s future behavior, such a tip is not enough to permit police to detain a citizen and subject him or her to a *Terry* stop.

Regarding indicia of reliability of a tip, courts look first to the reliability of the informant. If there is no evidence that the informant is honest and reliable and no evidence of the caller’s basis for knowledge, as in an anonymous tip, courts look to other information which tends to corroborate the tip. In examining corroboration, courts distinguish between information which is easily obtained and that which is known only to a few. Only in the latter case will the corroboration show that an anonymous informant is probably reliable. Finally, the information which is corroborated should tend to show criminal activity has occurred or is about to occur. Remember, independent corroboration is the key.

Cases *Campbell v. State*, ___ N.E.2d ___ (Ind. Ct. App. 2006).
 Powell v. State, ___ N.E.2d ___ (Ind. Ct. App. 2006).